

DOCUMENT #: EO-94-012-MM

TITLE:

Exemptions and Preparation of Notices of Exemption Pursuant to Requirements of the California Environmental Quality Act

AFFECTED
PARTIES:

Hazardous Waste Management Program
Site Mitigation Program
Office of Pollution Prevention & Technology
Office of Legal Counsel and Criminal Investigations

AUTHORITY
CITED:

Sections 21083 and 21087, Public Resources Code;
Reference: Section 21084, Public Resources Code

PURPOSE:

The purpose of this memorandum is to establish the procedures for Department of Toxic Substances Control (Department) staff to determine, on a case-by-case basis, whether: (a) an activity is exempt from the California Environmental Quality Act (CEQA); and (b) to prepare a Notice of Exemption (NOE) as provided for in the CEQA Guidelines. (Title 14, California Code of Regulations (14 CCR), sections 15000 et seq.)

BACKGROUND:

When the Department begins work on a project, staff must determine the applicability of CEQA. For activities where it is determined that there is no possibility that the activity may have a significant effect on the environment, an exemption from CEQA may be appropriate. There are two categories of exemptions. Statutory exemptions are identified by the legislature and included in various statutes. Categorical exemptions are identified in the CEQA Guidelines and identify categories of classes of projects that generally will not have a significant effect on the environment.

The filing of a NOE is discretionary. However, the statute of limitations for challenging an agency's CEQA determination is significantly reduced for those projects which are

exempt and for which a NOE is filed. When a NOE is filed, the statute of limitations for legal challenge is 35 days. If a NOE is not filed, a 180 day statute of limitations is in effect. (Public Resources Code (PRC) section 21167 and 14 CCR section 15062).

Activities that are exempt from CEQA for various reasons are defined below. Following that discussion are lists of exempt activities for which NOEs are and are not prepared.

Finally, this memorandum describes an overview of the NOE process and provides a step-by-step procedure for claiming an exemption and preparing a NOE.

CEQA EXEMPT ACTIVITIES:

Statutory and Non-Project Exemptions:

Examples of Department activities which are statutorily exempt and/or are exempt because they do not meet the definition of "project" include:

- (1) Activities specifically exempted by state statute such as "ministerial projects proposed to be carried out or approved by public agencies." PRC section 21080, (b) (1);
- (2) Proposals for legislation to be enacted by the State Legislature;
- (3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (unless they are specifically covered in CEQA or the CEQA Guidelines);
- (4) Enforcement and emergency actions.

Categorical Exemptions:

Types of Department activities which may meet the definition of categorical exemptions (CEQA Guidelines, Article 19, commencing with Section 15300) include:

- (1) Operation, repair, maintenance, or minor alteration of existing structures or facilities not expanding existing uses (Class 1);
- (2) Certain minor alterations of land, water, or vegetation (Class 4);
- (3) Basic data collection, research, experimental management, and resource evaluation activities (Class 6);
- (4) Regulatory actions taken to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption. (Class 8)

See Attachment A for a summary of categorical exemptions which most often apply to Department activities.

Categorical exemptions may only be used when proposed activities do not result in the potential for significant environmental impacts. In the following circumstances, categorical exemptions do not apply:

- (1) A reasonable possibility exists that the activity may have a significant environmental impact because of unusual circumstances;
- (2) Cumulative impacts associated with an activity would be significant;
- (3) A project within certain categories of exemption occurs in certain specified sensitive environments;
- (4) A project affects scenic resources within official state scenic highways;
- (5) A project located on a site that the Department of Toxic Substances Control and the Secretary for Environmental Protection have identified as being affected by hazardous wastes or clean-up problems pursuant to Govt. Code section 65962.5 (PRC section 21084 (c));
- (6) A project causes substantial adverse changes in significant historic resources.

If a project may have any of the impacts identified above, a categorical exemption is not appropriate.

PREPARATION OF NOEs:

Exempt Activities Which Require NOEs:

NOEs are prepared for most exemptions from CEQA defined in PRC sections 21080(b), 21085 and 21172. These exemptions include:

- Categorical exemptions;
- Ministerial acts;
- Emergency repairs to public service facilities;
- Actions to mitigate emergencies;
- Permit denials;
- Approval of rates;
- Actions under functional equivalency; and
- Repairs to facilities damaged by natural disaster.

Exempt Activities Which Do Not Require NOEs:

NOEs are generally not required for activities that do not meet the definition of project (for reasons other than being ministerial acts). Non-projects within this group include:

- Legislative proposals;
- Continuing administrative activities;
- Submittals of proposals to a vote of the people; and
- Activities with absolutely no potential for significant effect on the environment (CEQA Guidelines section 15061(b)(3)). (NOTE: Any exemption determination in this category must have concurrence from PEAS.)

PROCESS DESCRIPTION:

All Department activities that qualify for an exemption from CEQA which require NOEs will use the following NOE process to fulfill CEQA requirements. All NOEs are filed with the Office of Planning and Research, State Clearinghouse, using the NOE procedures detailed in this memorandum.

Once a determination has been made that there is a project and the project qualifies for an exemption, the program must submit the following documents to the Office of Program Audits and Environmental Analysis (OPAEA).

- (1) A transmittal memorandum (see Attachment B) to the OPAEA.

The purpose of this memorandum is to ensure that the exemption request contains sufficient evidentiary support to make a finding that the project will not create a significant adverse impact. If sufficient justification for such a finding is not included, an explanation must be provided as to the reasonable efforts made to obtain the information, and why the lack of information does not result in a presumed potential significant adverse impact.

The transmittal memorandum to the OPAEA must include the following:

- a. A copy of the Fact Sheet which has a description of the project.
- b. A statement of reasons by the project manager indicating why there is no possibility that the project has the potential for causing significant environmental effects.

- c. Identification of the exemption and a brief justification, on the NOE form, for the application of the exemption to the project.

FOR CLOSURE PLAN EXEMPTION ONLY:

- d. A statement that if significant contamination or environmental effect is found, a plan to correct the effects will be prepared and a new CEQA evaluation conducted prior to plan approval. This statement must be made in the transmittal memorandum and on the NOE form.

(2) Notice of Exemption Form (Attachment C)

The purpose of this form is to identify whether the exemption is statutory or categorical and what specific "class" of the categorical exemptions (as defined in Article 19 of the CEQA Guidelines) has been identified as appropriate to the project. (See the attached list for specific categorical exemptions.)

(3) Notice of Exemption Tracking form (Attachment D)

The purpose of this form is to ensure that the OPAEA staff review the project to determine whether a NOE is appropriate.

PROCESS STEPS:

The following steps describe how Department staff will review and complete NOE requests:

Step #1. The project manager prepares the NOE, the transmittal letter which provides internal documentation for the request, and the NOE Tracking Form. The Tracking form is dated, initialed, signed by the Branch Chief or his/her designee, and sent to the OPAEA.

Step #2. The NOE package is received and date-stamped, logged and assigned to the OPAEA staff. The OPAEA staff will review the NOE package to ensure that there is sufficient justification to warrant an exemption and that an exemption is appropriate. NOEs will be reviewed and evaluated within fifteen (15) working days from the date of receipt by the OPAEA staff. The OPAEA staff will provide a written set of responses and comments to program staff seeking an exemption.

Step #3. Program staff shall address the comments from the OPAEA in the NOE and forward a copy of the revised NOE and attachments to the OPAEA to review the NOE package for completeness. For projects that do not require public comment, an approved package is then forwarded to the Office of Planning and Research, State Clearinghouse. For projects which require public notice, see Step #4 below.

Step #4. For projects that require Public Notice, the Public Notice shall include a statement that the draft NOE is available for public comment. (Public Notice requirements can be found in the Public Participation Policy and Procedures Manual, section 700-40-01.) Once any public comments have been reviewed, program staff shall prepare a memorandum to the file which, at a minimum, indicates that the comments have been considered. If significant comments or categories of comments are received, program staff shall prepare the responses as specified in Management Memorandum #EO-94-013-MM, (Response to Comments). If staff's analysis of the comments indicates that any part of the NOE package should be revised, staff shall prepare and send the suggested changes to the OPAEA for review and approval. Once this process is complete, the OPAEA shall forward the NOE package to the Office of Planning and Research, State Clearinghouse.

IMPLEMENTATION:

All affected Department programs shall implement the procedures contained herein. Additional assistance concerning this memorandum may be obtained by contacting the OPAEA at 322-8162/CALNET 492-8162.

Categorical exemption requirements are outlined in Article 19 of the CEQA Guidelines. Statutory exemptions are outlined in Article 18 of the CEQA Guidelines and can be found in Public Resources Code sections 21080 (b), 21080.22, 21060.3, 21102, 21150, 25985, 33000 et seq., and 41375; Water Code sections 1729, 13372, 13389, and 13552.4 (c) (1); Gov. Code sections 33913, and 51119; Health and Safety Code sections 1597.46, and 44561; Chapter 648 Stats. of 1992; Chapter 113, Sec. 1, Stat. of 1992).

CONTACT:

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Original Signed By:
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November 17, 1995

Date

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